

REMARKS

The present application has been carefully studied in view of the outstanding Office Action dated June 3, 2004, and reconsideration of that Action is requested in view of the following comments.

Claims 1-6 are currently pending in this application. All of these claims are specific in the recitation of an assembled ten pack carton separable into smaller multi-pack retail units, and wherein each retail unit has at least one open end exposing the packs therein.

Applicant respectfully submits that the subject matter of claims 1-6 is not anticipated or rendered obvious by the prior art taken alone or in combination with one another. Specifically, claims 1 and 3 are not anticipated by Cobler US 5,158,178 or DeBlasio et al US 5,201,413 ("DeBlasio"), for the following reasons. Additionally, claims 1-6 are not rendered obvious by the combination of Cobler and either Swift US 192,883 or Meyers US 3,276,574.

Applicant respectfully disagrees with the Examiner's analysis of the Cobler reference, particularly with respect to the statement that each smaller multi-pack retail unit has an open end exposing the packs therein. In support of this statement, the Examiner directs attention to Figure 8 of Cobler. However, Figure 8 simply shows a ten pack carton open at the top prior to insertion of the cigarette packs. Once the packs are properly inserted in the carton the two top flaps are closed to thereby completely surround the packs within the carton. Also, when the carton is separated into two five-pack retail units there is no open end exposing the packs therein. Instead, each five-pack retail unit is totally surrounded by the carton structure. No packs are exposed until

the retail unit is opened by the consumer in order to remove the packs therefrom.

Accordingly, Cobler fails to disclose the subject matter recited in claims 1-6.

Applicant also takes issue with the Examiner's analysis of the DeBlasio reference for the same reasons noted above with respect to Cobler. In this regard, the Examiner erroneously states that each smaller multi-pack retail unit has an open end exposing the packs therein. Attention is directed to Figure 5 of DeBlasio. However, Figure 5 simply illustrates a ten pack carton with the upper cover flaps open prior to insertion of the individual packs of cigarettes. Once the packs are properly inserted in the carton the flaps are closed. Also, when the ten pack carton is separated into two retail units, the flaps remain closed and each retail unit includes carton structure that totally surrounds the individual cigarette packs within that unit. The smaller multi-pack retail units remain closed until they are opened by the consumer for purposes of pack removal. The retail unit prior to purchase remains in a state where the carton structure totally surrounds the cigarette packs therein. There is no open end exposing the packs until the integrity of the carton structure is destroyed the by consumer. Accordingly, for these reasons DeBlasio does not anticipate the subject matter of claims 1 and 3.

The secondary references of Swift and Meyers do not address the deficiencies of the primary Cobler reference or even DeBlasio for that matter. Instead these references are relied upon simply to show carton structure divisible into various combinations. The secondary references do not address the issue of a smaller multi-pack retail unit having an open end exposing the packs therein.

In summary, the primary references of Cobler and DeBlasio fail to disclose the subject matter of the present invention for the reasons discussed above. Specifically

they do not disclose retail units having an open end exposing the packs therein.

Instead once these retail units are sold and therefore lose their status as retail units, they are opened by the consumer to remove the packs. In the present invention the retail units themselves have an open end exposing the packs therein.

Accordingly, in the absence of additional prior art of increased pertinency, it is believed that the present application is in condition for allowance and early notice to that effect is respectfully requested.

Respectfully submitted,

By 

Richard M. Beck

Registration No.: 22,580
CONNOLLY BOVE LODGE & HUTZ LLP
1007 North Orange Street
P.O. Box 2207
Wilmington, Delaware 19899
(302) 658-9141
(302) 658-5614 (Fax)
Attorney for Applicant